IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 7594 of 2006

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE MD SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SUO MOTU CONTEMPT PROCEEDINGS - Applicant(s)
Versus
MR. YATIN N. OZA PRESIDENT, - Respondent(s)

==========

Appearance :
MR MIHIR THAKORE SENIOR ADVOCATE with MR HARIN P RAVAL for Respondent – Contemner
MR KAMAL TRIVEDI ADVOCATE GENERAL
MR SN SHELAT SENIOR ADVOCATE with MR DEVANG NANAVATI for Respondent-Gujarat High Court Advocates Association
MR JB PARDIWALA for Respondent – Gujarat High Court

==========

CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 12/10/2006

CAV JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

This suo motu contempt proceedings have been initiated against contemner - Shri Yatin N. Oza – Senior Advocate and Former President of the Gujarat High Court Advocates' Association (for short “Bar Association”) as per the order dated 3.4.2006 passed by His Lordship R.S.Garg, J.

This matter was placed for the first time before the Division Bench (Coram : Anil R. Dave and H.B.Antani, JJ.) on 21.7.2006 and notice to the contemner was issued making it returnable on 3.8.2006 with a direction to the contemner to personally remain present before the court.

On the first returnable date i.e. 3.8.2006 contemner personally remained present before the court through his learned advocate and also filed his affidavit dated 3.8.2006 stating that on 20.2.2006 as President of the Bar Association, a press note was issued by him. The said press note contains certain statements against Hon'ble Mr. Justice R.S.Garg. He sincerely believes that it was his mistake that he made such statements in the press note and he withdraws all the statements made therein. **He sincerely regret the issuance of the press note and the consequential harm done to the learned Judge and the Judiciary**. **He is genuinely repentant of his**

conduct and assured the court that no such act would be repeated by him in future and tenders his unconditional apology.

On 3.8.2006 learned Senior Advocate Shri Mihir Thakore for the contemner assured the Division Bench that the unconditional apology tendered to the court by the contemner be duly published in the newspapers as soon as possible and the matter was kept on 4.8.2006 and the contemner got published his apology in those newspapers dated 4.8.2006, which reads as under :-

"APOLOGY

After the meeting of the Gujarat High Court Advocates' Association held on 20.2.2006, I, Yatin Oza, Senior Advocate, as President of the Bar Association had issued a press note containing statements in relation to Honourable Justice R.S.Garg. I sincerely believe that it was my mistake that I made such statements and I withdraw the same. I sincerely regret the issuance of the press note and consequential harm done to the judiciary, for which I tender sincere, unconditional and unqualified apology.

Yatin Oza
Sd/-
(Senior Advocate
Former President, Gujarat High Court Advocates' Association"

On 4th the matter was adjourned to 7.8.2006. On 7.8.2006 Anil R. Dave, J. expressed his reservation

to take up the matter, therefore, it was placed before this Bench as per the order passed by the learned Acting Chief Justice.

On 7th October, after hearing all the learned counsel for considerable time, order was reserved.

Main argument of all the learned counsel was that when the contemner had already tendered his unconditional apology to the court on the first returnable date without any justification with an assurance not to repeat such act in future and that he was profusely repentant for his irresponsible act, then by showing its magnanimity the court may accept unconditional and unqualified apology tendered by the contemner and drop the proceedings.

When this matter was placed for orders on 11th, the contemner – Shri Yatin Oza requested that before pronouncing the order he may be given an opportunity to tender his unconditional apology to His Lordship R.S.Garg, J. and thereafter this court may pass final order in the matter. Request was granted and the matter was kept after recess.

After recess, the contemner appeared through his Senior Advocate Shri Mihir Thakore and stated that he had also tendered apology in open court to Hon'ble Mr. Justice R.S.Garg and the same was accepted by a brief order. Order of acceptance of apology of the contemner – Shri Yatin Oza passed by Hon'ble Mr.

Justice R.S.Garg on 11.10.2006 was placed before this court yesterday by Shri G.K.Upadhyaya, Registrar (Judicial). It reads as under :-

"CORAM : HON'BLE MR. JUSTICE R.S.GARG

October 11, 2006

Mr.Yatin N. Oza, Senior Advocate practicing in this Court has appeared with Mr.Mihir Thakor [Senior Advocate practising in this Court] and has tendered his unconditional apology to the Court for the acts which were earlier done by him, for which proceedings to register contempt was recorded against him and was forwarded to the Chief Justice for appropriate action. I must tell all present in the court that a Judge does not enjoy drawing contempt proceedings against anybody and specially in case of a lawyer. A Judge feels bad when he has to draw contempt proceedings against his own officer. A lawyer practising in the court is not a party, but he, in fact, is part of the Court. When a Judge feels aggrieved by the conduct of a lawyer and no settlement is possible or action taken by the counsel is so bad that except drawing contempt proceedings, there is no alternative way, only in such circumstances, a Judge draws contempt proceedings against a practicing advocate.

I must also say that whatever persuaded Mr.Oza to take an action would be now immaterial in view of the unconditional apology tendered by him. When a person realizes his mistakes and offers unconditional apology, then, in fact, he shows his grace and such grace should always be met by the magnanimity of the authority by accepting such unconditional apology.

I accept the unconditional apology tendered in the open Court by Mr.Yatin N. Oza, Senior Advocate and hereby direct that these proceedings be placed before the

concerned Bench, which is hearing contempt matter for due appreciation.

Sd/-
[R.S.GARG, J.]"

Order was then reserved.

It was submitted by Shri Mihir Thakore Senior Advocate for the contemner that the contemner had not only tendered his apology on the first returnable date to this court, but also got his apology published in the newspapers, as desired by another Bench and that on his own he has also now tendered his sincere unconditional apology to the Hon'ble Judge, against whom reckless and baseless allegations were made, who has also accepted his unconditional apology, therefore, this court may also accept his apology and drop the proceedings.

It is true that the contemner had tendered his apology on the first returnable date of issuance of notice in this petition. It is also true that as desired by another Bench he had also got published his apology in those newspapers in which derogatory statements were published. It is also true that when the matter was kept for pronouncement of the order he expressed his willingness to go to the Hon'ble Judge and tendered his apology to the learned Judge. It is also true that the learned Judge has also accepted his apology by his brief order. However, in the instant case, there was not only attack on the individual Judge of this court, but also on this Institution as a whole. Therefore, it was not

necessary for this court to accept the apology and drop the proceedings against the contemner. In present scenario, last hope is on the Judiciary. No one should make any attempt to cause any damage to this glorious institution. It is rather the duty of the Bar to protect the Judiciary from any outside attack. Instead, in this case, an attempt was made by the contemner to tarnish its image. Contemner – Shri Yatin Oza is having almost 25 years practice at the Bar. He is designated as `Senior Advocate' since 1999 and also remained leader of the Bar for last 7 terms i.e. since June, 1999 to June, 2006. It was rather expected from him to behave in the matter with full sobriety and responsibility. However, this being first lapse, no strict view is taken in the matter in view of his unconditional apology tendered with his assurance and his Senior Advocate Shri Thakore that he would not repeat such act in future.

We firmly believe that relations between the Bar and Bench should always remain smooth and cordial. Once, the Hon'ble Judge of this court has shown his magnanimity in spite of such serious allegations made against him and accepted unconditional apology tendered by the contemner by showing grace, then there is no reason for this court not to accept his unconditional apology. Accordingly, we also accept the unconditional apology tendered by the contemner – Shri Yatin Oza with an assurance given by him and his Senior Advocate Shri Thakore to the court that in future such act will not be repeated by him and drop

this suo motu contempt proceedings initiated against him, by discharging the notice of rule issued in this matter.

(B.J.SHETHNA, J.)

(M.D.SHAH, J.)

*pvv